



CENTRO DE INTEGRIDADE PÚBLICA  
Anticorrupção - Transparência - Integridade

# EXTRACTIVE INDUSTRY

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## REFERENCE PRICE – REGULATION NOT ENOUGH TO TACKLE UNDER-INVOICING IN THE EXTRACTIVE SECTOR

- Documentary inspection of quality and quantity to determine the value of the mineral product will not be sufficient to tackle under-invoicing, reduce tax evasion and ensure a fair share of the production tax that increases the benefits of the exploitation of mineral products for the country.

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### 1. Introduction

The Government approved, through Ministerial Diploma No. 91/2023 of 16 June, the Reference Price Regulation for the purpose of determining the value of the mining product, which finally fills a gap in the calculation of the tax on mining production. Because of this gap, the State has been incurring tax losses that negatively impact public accounts. An assessment made for the period from 2013 to 2017 shows that the Mozambican State lost, due to the lack of this regulation, about 893.5 billion meticaís<sup>1</sup>.

To that extent, the Ministry of Economy and Finance (MEF) states in a press release that the regulation aims to combat under-invoicing, reduce tax evasion and increase the benefits of the exploitation of mining products for the country<sup>2</sup>.

Given that the price and quantity produced are the key elements for calculating the tax on mining production. An accurate knowledge of these elements is essential for the State to maximise its collection. In this case, despite the approval of this decree, the problem of effective monitoring of the quantity of minerals at production and export sites remains. The transparency that should guide the certification of the values of the mining product and the process of contracting the entity for the inspection of the quantities and specifications of exported ores is also a challenge.

This paper argues that the approved Regulation aims to ensure a fair portion of the production tax on the mining product. However, monitoring, determination of the volume of production, assessment of the quality of minerals and transparency of the whole process for determining the value of the mining product currently prevail as the biggest challenges.

### 2. Documentary check not enough to tackle under-invoicing

The Ministry of Economy and Finance and the Ministry of Mineral Resources and Energy approved, through Ministerial Diploma No. 91/2023 of 16 June, the Reference Price Regulation for the purpose of determining the value of the mining product, the purpose of which is to combat under-invoicing, reduce tax evasion and increase the benefits of the exploitation of mineral products for the country.

This diploma fills the gap in the calculation of the tax on mining production, which has been reported since 2018 by the Administrative Court (TA), through its Reports and Opinion of the General State Account (RPCGE)<sup>3</sup> and by the Centre for Public Integrity (CIP)<sup>4</sup>, through several articles in which it is indicated that the National Mining Institute (INAMI), as

<sup>1</sup> CIP estimate (2021). *The basis used for calculating the value of mining production undermines the tax revenue collected from the coal sector*. Available at: <https://www.cipmoz.org/pt/2021/03/28/a-base-usada-para-o-calculo-do-valor-da-producao-mineira-lesa-as-receitas-fiscais-arrecadadas-no-sector-de-carvao/>. Accessed 21/06/2023

<sup>2</sup> MEF (18/06/2023). *Note. Press*. Available at: <https://www.mef.gov.mz/index.php/imprensa/anuncios-e-comunicados/1909-18062023-nota-de-imprensa-precos-de-referencia-mineiros/file>. Accessed: 21/06/2023

<sup>3</sup> TA (2018-2021). *Report and Opinions of the General State Account*. Available at: <https://www.ta.gov.mz/#/rpege>. Accessed 21/06/2023

<sup>4</sup> CIP (2023). *The implementation of reference prices for Mozambican coal is urgent: - INE alters price data distorting the assessment of tax revenues for*

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a regulatory, evaluating and certifying body for mineral products, does not use international reference prices to calculate the value of coal production produced in Mozambique.

Since the price is a fundamental element for the calculation of the tax on mining production, the use of constant prices, a methodology that had been used by INAMI, created losses of more than 893.5 billion meticaís to the state treasury, between 2013 to 2017, according to an assessment made by CIP<sup>5</sup>.

Under the terms of the approved regulation, reference prices will be determined on the basis of international references. It will be managed by a joint team made up of the following representatives: *i)* Ministry of Economy and Finance; *ii)* Mozambique Taxing Authority; *iii)* National Mining Institute; *iv)* Inspectorate General of Mineral Resources and Energy; and Kimberley Process Management Unit.

The adoption of this Regulation could minimise revenue losses due to the use of constant prices. However, according to Article 5(3) (Quality and quantity) of this Regulation, the regulatory authorities shall verify the quantity declared by the mining holder on the basis of a comparative analysis of the quality and quantity declared ex-factory and at the last stage of shipment, pre-export.

In practical terms, the verification of quality and quantity will only be reliable if the regulatory authorities are able to place inspectors in all the targeted companies and in the port terminals, so as not to depend on the information that will be provided by the companies.

The challenge is raised by the fact that at the moment there are situations where some companies operate as islands, being responsible for self-declaration of the quality and quantity produced and exported.

Between April 2022 and January 2023, CIP visited Africa Great Wall Mining, which explores heavy sands on Olinda Island in Inhassuge district; Tazetta Resources, which explores heavy sands in Pebane village; TZM Resources, SA, which intends to explore heavy sands in Muebase, also in Pebane district and Highland African Mining Company, Lda, which explores tantalite in Marrupino, Mulevala district.

All the companies are in Zambezia province. In none of them was found any entity or infrastructure that shows the presence of national authorities supervising the activities, as is the case in the exploitation of heavy sands in Nampula by Kenmare, where, for example, a unit of the Tax Authority is deployed at the Larde port terminal.

In this regard, to reduce the risk of loss of revenue due to lack of effective certification of the quality and quantity of minerals, there should not only be documentary verification or inspection based on information from companies. Inspectors should be present at the production and export sites on a permanent basis. In this case, the Government should update the approved Regulation to accommodate this aspect.

Considering that mining encompasses not only large corporations, but also co-operatives and medium and small extractive companies, the State has the challenge of covering all these production areas. The mining census indicates, for example, the existence of at least 2162 artisanal mining sites, which shows the level of challenge to effectively enforce production<sup>6</sup>.

### 3. Implementation of the regulation begins with signs of lack of transparency and breaches of the regulation itself

The MEF press release<sup>7</sup> states that under the approved Regulation, the winner of an international public tender will soon be announced for the hiring of an independent entity that will supervise the quantity and specification of ores exported by companies exploiting mining resources.

Having analysed the Regulation, there is no article that indicates that an entity will be contracted to supervise the quantity and specification of the ores exported by companies that exploit mining resources. Article 5 states that the mining owner must carry out tests on the quality of the ore and submit them to the sector regulator, under the terms of the mining legislation, and Article 6 states that the Mozambican Tax Authority (AT), the National Mining Institute (INAMI) and the Kimberley Process Management Unit (UGPK) have the prerogative to validate the information submitted by the mining owner, through the extraction of samples and submission to public or private laboratories, duly accredited, within the Mozambican territory or abroad.

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*the State*. Available at: <https://www.cipmoz.org/pt/2023/02/27/e-urgente-a-implementacao-de-precos-de-referencia-para-o-carvao-mocambicano-ine-altera-dados-dos-precos-distorcendo-a-avaliacao-das-receitas-fiscais-para-o-estado/>. Acesso 21/06/2023; and CIP (2021). *The basis used to calculate the value of mining production jeopardises tax revenues collected in the coal sector*. Available at: <https://www.cipmoz.org/pt/2021/03/28/a-base-usada-para-o-calculo-do-valor-da-producao-mineira-lesa-as-receitas-fiscais-arrecadadas-no-sector-de-carvao/>. Accessed 21/06/2023

5 CIP (2021). *The basis used for calculating the value of mining production undermines tax revenues collected in the coal sector*. Available at: <https://www.cipmoz.org/pt/2021/03/28/a-base-usada-para-o-calculo-do-valor-da-producao-mineira-lesa-as-receitas-fiscais-arrecadadas-no-sector-de-carvao/>. Accessed 21/06/2023

6 INE (October 2022). *Results of the Census of Artisanal Miners in Mozambique, 2021*. Ministry of Mineral Resources and Energy

7 MEF (18/06/2023). Note. Press. Available at: <https://www.mef.gov.mz/index.php/imprensa/anuncios-e-comunicados/1909-18062023-nota-de-imprensa-precos-de-referencia-mineiros/file>. Accessed: 21/06/2023

In this case, the role of the independent entity is not defined. Thus, this entity will constitute an additional cost to the public purse, exercising the functions attributed to the AT, INAMI and UGPK. CIP's understanding is that, once the regulation is approved, the legal space for its operationalisation is created. However, this does not seem to be the case with this regulation.

A notice published on the *website* of the Economic Acceleration Package (EAP), dated 15 February 2023, indicates that the results of this tender would be announced on Tuesday 21 February 2023<sup>8</sup>, about 4 months before the approval of the legal bases.

The question is: on what legal basis was the international public tender launched for the hiring of a regulatory body if the Regulation had not yet been approved? Are we not dealing with a situation where the winners were chosen outside regulated criteria? Since the Regulation does not provide for such a body, what will be the basis for contracting?

This situation is a harbinger of a lack of transparency in this process, which already opens up room for distrust of the entity that will be chosen. In this case, it is believed that the Regulation itself should set out the procurement requirements as a way of ensuring transparency. This requires an amendment to the Regulation.

## 4. Conclusion

The approved diploma fills a gap that could improve state revenues by combating under-invoicing and reducing tax evasion, increasing benefits for Mozambicans. However, its approval does not necessarily imply success. There is a need for permanent inspectors to be stationed at production and export sites who can certify the quantity, produced and exported, declared by mining concession holders.

The process of contracting an independent body to monitor the quantity and specification of ores exported is in breach of the approved Regulation. It needs to be corrected. Either the regulation should be revised or the independent entity should not be contracted. In this case, AT, INAMI and UGPK take on the role provided for in the Regulation.

The weaknesses pointed out in this document stem from the fact that the Government did not present the proposal for this Regulation for public discussion, as is the case with several other normative instruments that deal with somewhat sensitive matters and have an impact on the lives of Mozambicans. This situation should be rethought for future cases.

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<sup>8</sup> PAE (15/02/2023). *Opening of the international tender for greater control of mineral resources*. Available at: <https://pae.gov.mz/abertura-do-concurso-internacional-para-maior-controle-de-recursos-minerais/>. Accessed 04/07/2023

## 5. Consulted Documents

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